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No. 182

In the Supreme Court of the United States

OCTOBER TERM, 1968

TOMMY TRUCHINSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted on two counts charging him with transmitting in interstate commerce information assisting in the placing of bets, in violation of 18 U.S.C. 1084. He was given a general sentence of two years' probation and was fined $2000. The court of appeals affirmed on April 29, 1968 (Pet. App.). The petition for a writ of certiorari, filed on June 12, 1968, is out of time under Rule 22(2) of the Rules of this Court. There is, in any event, no occasion for review.

Petitioner's sole contention is that there was insufficient evidence to show that the gambling information supplied by him in fact "assisted" in the placing

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of bets. On this basis he argues that the statute, as applied, violated his First Amendment right to exchange opinions and information with other persons.[1] The facts supporting petitioner's conviction are set out in detail in the opinion below (Pet. App. 2–8). For the reasons there developed, we submit that the evidence was more than ample to sustain the conviction and sentence imposed.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1968.

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[1] We do not read the petition as attacking the constitutionality, on its face, of 18 U.S.C. 1084 as an infringement of the First Amendment. In any event, the contention would be without merit. *Katz* v. *United States*, 369 F. 2d 130, 135 (C.A. 9), certiorari denied as to this issue, 386 U.S. 954. See also the opinion below, Pet. App. 14–15.

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